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CITY OF OAKLAND, RICHARD WORD, et al.

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17

18 JERVIS A. MUWWAKKIL; DORIS J.
19 MUWWAKKIL; and KAYLA D. WHEATFALL
and NILE GLENN, minors, by and through
20 their guardian ad litem, GLORIA A. GLENN

21 Plaintiffs,

22 v.

23 CITY OF OAKLAND, a municipal corporation;
RICHARD WORD, in his capacity as Chief of
24 Police for the CITY OF OAKLAND; IRA
PEREZ, individually, and in his capacity as a
25 police officer for the CITY OF OAKLAND;
JOHN CLEMENT, individually, and in his
26 capacity as a police officer for the CITY OF
OAKLAND; MARCUS MIDYETT, individually,
and in his capacity as a police officer for the

Case No. C 02-01799 CW

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: August 16, 2002

Time: 1:30 p.m.

**Ctrm: 2/Oakland Federal Building
Honorable Claudia Wilken**

1 CITY OF OAKLAND; TEGRE MILES,
 2 individually, and in his capacity as a police
 3 officer for the CITY OF OAKLAND; VON
 4 WISSMILLER, individually, and in his
 5 capacity as a police officer for the CITY OF
 6 OAKLAND; JOSEPH McGUINN, individually,
 7 and in his capacity as a police officer for the
 8 CITY OF OAKLAND; and, DOES 1 through
 9 50, inclusive

10 Defendants.

11 The parties hereby submit the following Joint Case Management Conference
 12 Statement:

13 **I. PLAINTIFFS STATEMENT OF FACTS:**

14 On April 14, 2001, at approximately 5:00 p.m., JAMIL WHEATFALL, decedent, was
 15 observed driving a green Pontiac in Oakland, California by defendant police officers
 16 MIDYETT, CLEMENT, and PEREZ. Said defendant police officers suspected decedent of
 17 having robbed a bank earlier that day. Said defendant police officers pursued decedent's
 18 vehicle until he came to a stop at or near the intersection of 64th Avenue and
 19 Buena Ventura Street in Oakland, California. Decedent exited his vehicle and immediately
 20 put up his hands to surrender to defendant police officers. Then, without any just
 21 provocation or cause, defendants MARCUS MIDYETT, IRA PEREZ, and JOHN
 22 CLEMENT assaulted and battered JAMIL WHEATFALL.

23 Defendants MIDYETT, PEREZ, and CLEMENT assaulted and battered decedent
 24 JAMIL WHEATFALL, repeatedly hitting him with their batons and kicking him after he had
 25 fallen to the ground, striking decedent's head, body, arms, hands, and legs in the course
 26 of their attack. Defendant police officers MARCUS MIDYETT, IRA PEREZ, and JOHN
 CLEMENT were then joined in their assault and battery of decedent by defendant police
 officers TEGRE MILES, VON WISSMILLER, JOSEPH McGUINN, and DOE defendant
 police officers. Defendant police officers continued to assault and batter JAMIL
 WHEATFALL after he was lying on the ground and handcuffed.

While decedent JAMIL WHEATFALL was lying on the ground and being beaten and

1 kicked, one of defendant police officers used a chokehold on decedent's neck, restricting
2 his ability to breathe. As the proximate result of defendant police officers' extensive assault
3 and battery, and choking, JAMIL WHEATFALL suffered and died.

4 The above-described assault, battery, and killing of JAMIL WHEATFALL by defendant
5 police officers was brutal, malicious, and without any just provocation or cause,
6 proximately causing JAMIL WHEATFALL's suffering and death, and injuries and damages
7 to plaintiffs.

8 Defendant CITY, by and through its supervisory employees and agents, Chief of Police
9 RICHARD WORD, and DOES 26-50, inclusive, has and had a mandatory duty of care to
10 properly and adequately hire, train, retain, supervise, and discipline its police officer
11 employees so as to avoid unreasonable risk of harm to citizens. With deliberate
12 indifference, CITY, Chief of Police RICHARD WORD, and DOES 26-50, inclusive, failed to
13 take necessary, proper, or adequate measures in order to prevent the violation of
14 decedent's and plaintiffs' rights, the suffering and death of decedent, and injuries and
15 damages to plaintiffs. CITY, Chief of Police RICHARD WORD, and DOES 26-50,
16 inclusive, breached their duty of care to citizens in that they failed to adequately train,
17 supervise and discipline their police officers, including, IRA PEREZ; JOHN CLEMENT;
18 MARCUS MIDYETT; TEGRE MILES; VON WISSMILLER; JOSEPH McGUINN; and
19 DOES 1-25, inclusive, in the proper use of force, and/or failed to have adequate policies
20 and procedures regarding the proper use of force. This lack of adequate supervisory
21 training demonstrates the existence of an informal custom or policy of promoting,
22 tolerating, and/or ratifying the continuing use of excessive force toward citizens by police
23 officers employed by defendant CITY.

24 Based on information and belief, plaintiffs allege that prior to the date of the subject
25 incident involving decedent, JAMIL WHEATFALL, defendant Oakland police officers had a
26 history of engaging in acts of excessive force, of which defendants CITY, RICHARD
WORD and DOES 26-50, inclusive, knew or should have known for quite some time prior
to the subject incident involving decedent. Based on information and belief, plaintiffs
further allege that despite their knowledge of defendant Oakland police officers' repeated
and egregious misconduct, defendants CITY, RICHARD WORD, and DOES 26-50,

1 inclusive, failed to properly and adequately train, supervise, and discipline said defendant
2 Oakland police officers for said repeated and egregious misconduct.

3 **II. DEFENDANTS' STATEMENT OF FACTS**

4 On the morning of April 14, 2001, a bank teller at a Wells Fargo Bank branch on
5 Fruitvale Avenue in Oakland was robbed by a man who handed her a note and implied
6 that he was armed. A bank security guard watched the robber as he left the bank, got into
7 an older model green car and drove away. The guard called the Oakland Police
8 department and provided a description of the robber, the vehicle and the vehicle's license
9 number.

10 Several hours after the robbery, Oakland Police Officer MARCUS MIDYETT
11 spotted the suspect, later identified as the decedent, JAMIL WHEATFALL, in East
12 Oakland driving the green car described by the bank security guard. Officer MIDYETT
13 broadcast the location of the vehicle and its direction on his police radio but did not
14 immediately follow because he had a passenger in his car. Mr. WHEATFALL's car was
15 soon spotted by Officers Mauricio Perez and KENNETH CLEMENT who were in a marked
16 police vehicle. The officers followed the car briefly and then attempted to pull him over.
17 When the officers activated their emergency lights Mr. WHEATFALL accelerated and
18 drove recklessly through city streets, running several stop signs.

19 Finally, Mr. WHEATFALL's car failed to negotiate a turn and slammed into an
20 embankment. The officers ordered Mr. WHEATFALL to get out of the car and to keep his
21 hands in the air. Instead of complying with the officers commands, Mr. WHEATFALL
22 opened his car door and attempted to run. He was caught by officer Perez and the two
23 wrestled as WHEATFALL struggled to get away. During the course of the struggle, Mr.
24 WHEATFALL twisted Officer Perez's thumb, fracturing it. Mr. WHEATFALL was tackled to
25 the ground continued to wrestle with CLEMENT, PEREZ and other officers who arrived to
26 assist. Throughout the struggle the WHEATFALL failed to comply with the officers
repeated commands to stop resisting and to place his hands behind his back.. After
several minutes, the officers were able to force Mr. WHEATFALL's arms in a position
where they could be handcuffed, whereupon Mr. WHEATFALL's resistance ceased.
Shortly afterward the officers noticed that Mr. WHEATFALL had stopped breathing.

1 Paramedics were unable to resuscitate him.

2 Mr. WHEATFALL'S girlfriend stated to the police after the incident that Mr.
3 WHEATFALL had ingested rock cocaine just prior to his contact with the police. Further, a
4 significant amount of cocaine was found in WHEATFALL's blood upon by the medical
5 examiner. The autopsy report lists the cause of death as SUDDEN DEATH OF COCAINE
6 INTOXICATED INDIVIDUAL DURING PHYSICAL ALTERCATION AND RESTRAINT .

7 Defendant's contend that, under the circumstances, the amount of force used was
8 reasonable and necessary to effect a lawful arrest.

9 **III. FACTUAL ISSUES**

10 1. Whether the actions of defendant police officers were reasonable and necessary
11 under the circumstances;

12 2. Whether decedent physically confronted and/or physically struck defendant officers;

13 3. Whether reasonable force was used by defendant officers;

14 4. Whether plaintiffs suffered any injuries or damages as the result of wrongful conduct
15 by defendant officers;

16 5. Whether decedent suffered any injuries or damages as the result of wrongful
17 conduct by defendant officers;

18 6. Whether prior to the date of the subject incident involving decedent JAMIL
19 WHEATFALL, defendant Oakland police officers had engaged in acts of excessive force of
20 which defendants CITY, RICHARD WORD, and DOES 11-25, inclusive, were aware for
21 quite some time prior to the subject incident involving decedent;

22 7. Whether despite their alleged knowledge of said defendant Oakland police officers'
23 repeated and egregious prior use of excessive force, defendants CITY, RICHARD WORD,
24 and DOES 11-25, inclusive, fail to properly and adequately investigate and discipline said
25 defendant Oakland police officers for said repeated and egregious misconduct.

26 **IV. LEGAL ISSUES**

Plaintiffs' causes of action are for: (1) Violation of 42 U.S.C. Section 1983 against
defendant police officers, on behalf of decedent; (2) Violation of 42 U.S.C. Section 1983
against defendants CITY OF OAKLAND; RICHARD WORD, on behalf of decedent and for
plaintiffs;

1 (3) Wrongful Death-Intentional (C.C.P. Sections 377.60 and 377.61) against defendant
 2 police officers, for plaintiffs; (4) Wrongful Death-Negligence (C.C.P. Sections 377.60 and
 3 377.61) against defendant police officers, for plaintiffs; (5) Violation of California Civil Code
 4 Section 52.1 against defendant police officers, on behalf of decedent; (6) Intentional
 5 Infliction of Emotional Distress against defendant police officers, on behalf of decedent; (7)
 6 Negligent Infliction of Emotional Distress against defendant police officers, on behalf of
 7 decedent;
 8 (8) Negligence against defendants CITY OF OAKLAND; RICHARD WORD; and DOES, on
 9 behalf of decedent; and, (9) Negligent hiring, retention, training, supervision, and discipline
 10 against defendants CITY OF OAKLAND; RICHARD WORD; and DOES, on behalf of
 11 decedent and for plaintiffs.

12 1. Whether defendant police officers had probable cause to arrest or imprison
 13 decedent JAMIL WHEATFALL;

14 2. Whether defendant police officers assaulted or battered decedent, without just
 15 provocation or cause;

16 3. Whether defendant police officers are entitled to qualified immunity;

17 4. Whether defendant police officers are entitled to use reasonable force to effect the
 18 arrest of decedent;

19 5. Whether defendant CITY OF OAKLAND, by and through its supervisory employees
 20 and agents, defendants RICHARD WORD, Chief of Police for the CITY, and DOES 11-25,
 21 inclusive, with deliberate indifference, failed to take necessary, proper, or adequate
 22 measures in order to prevent the violation of decedent's or plaintiffs' rights, and injuries to
 23 decedent or plaintiffs;

24 6. Whether defendants CITY, RICHARD WORD, and DOES 11-25, inclusive,
 25 breached their duty of care to decedent or plaintiffs, in that they failed to adequately hire,
 26 retain, supervise, discipline, and train police officers, including defendant police officers, in
 the proper use of force, and/or failed to have adequate policies and procedures regarding
 the proper use of force;

7. Whether said defendants' alleged lack of adequate supervisory training
 demonstrates the existence of an informal custom or policy of promoting, tolerating,

1 and/or ratifying the continuing use of excessive force by police officers employed by
2 defendant CITY OF OAKLAND;

3 8. Whether any of defendant police officers' alleged misconduct towards decedent
4 proximately caused injuries and damages to decedent or to any of plaintiffs; and,

5 9. Whether the above-described alleged misconduct of defendants CITY; RICHARD
6 WORD, and DOES 11-25, inclusive, proximately cause injuries and damages to decedent
7 or to any
8 of plaintiffs.

9 **V. ADDITIONAL PARTIES TO BE SERVED**

10 Plaintiffs are not aware of any additional parties to be served at this time.

11 **VI. DISCLOSURES**

12 The parties certify that they have each filed and served their Initial Disclosure
13 Statements.

14 Defendants have agreed to produce the following items (not produced with Defendants'
15 Initial Disclosure Statement), pursuant to the following conditions:

16 1. Pertinent portions of OPD Internal Affairs records (defendants will produce same
17 following entry of a Stipulated Protective Order);

18 2. OPD Radio Dispatch Report and Dispatch Audiotape;

19 3. 209 Color Photographs taken by OPD Technicians on night of subject incident
(which defendants will produce at plaintiffs' expense);

20 4. 17 Cassette Tapes containing witness interviews (which defendants will produce at
21 plaintiffs' expense); and,

22 5. Four (4) Color Copies of photographs taken in connection with the subject incident
(which defendants will produce at plaintiffs' expense).

23 The parties will meet and confer regarding Oakland police Internal affairs documents
24 regarding the investigation of the subject incident, and defendants have preliminarily
25 agreed to produce such documents to plaintiffs subject to a Stipulated Protective Order.

26 ** See Plaintiffs' Initial Disclosure Statement and Defendants' Initial Disclosure
Statement for list of documents parties have produced, and list of documents to be
produced subject to certain conditions.

1 **VII. DAMAGES**

2 ** See Plaintiffs' Initial Disclosure Statement stating damages.

3 **VIII. DISCOVERY**

4 The parties certify that they have completed their Joint Proposed Discovery Plan in August 2002, after having met and conferred pursuant to FRCP Rule 26(f).

5 The parties joint Proposed Discovery Plan states, as follows:

6 The parties will need to conduct discovery with regard to the following subjects:

7 **A. PARTIES AND WITNESSES:**

8 ** See list of parties and witnesses set forth in Plaintiffs' Initial Disclosure Statement and Defendants' Initial Disclosure Statement.

9 **B. DISCOVERY GUIDELINES:**

10 1. All discovery, except that regarding expert witnesses to this action, shall be
11 commenced in time to be completed no later than sixty (60) days before the date of trial.

12 2. The exchange of identities of expert witnesses are to be disclosed by not later than
13 sixty (60) days before trial date, with discovery of said expert witnesses to be completed
14 by no later than thirty (30) days before trial date.

15 3. A maximum of twenty-five (25) Interrogatories by each party to any other party shall
16 be permitted. Responses to a party's Interrogatories shall be due pursuant to the Federal
Rules of Civil Procedure.

17 4. A maximum of twenty-five (25) Requests for Admission by each party to any other
18 party shall be permitted. Responses to a party's Requests for Admission shall be due
19 pursuant to the Federal Rules of Civil Procedure.

20 5. A maximum of ten (10) depositions by each plaintiff and ten (10) depositions by
each defendant shall be permitted, exclusive of expert witness depositions.

21 6. The parties will meet and confer regarding the scheduling of any independent
22 medical examination of any plaintiff.

23 7. All reports from retained experts, if any exist, shall be disclosed no later than ten
24 (10) days before that expert's deposition.

25 8. The Federal Rules of Civil Procedure shall govern all supplementations.

26 9. The parties agree to permit and participate in the following matters should the Court

1 find them necessary:

- 2 a. Conference with the Court before entry of the Scheduling Order;
- 3 b. Pre-Trial Conferences;
- 4 c. Settlement Conferences; and,
- 5 d. Leave to amend pleadings and/or join any additional parties.

6 **IX. DISPOSITIVE MOTIONS**

7 All potentially dispositive motions will be heard by no later than six (6) weeks before trial.

8 **X. TRIAL WITNESS LISTS AND TRIAL EXHIBIT LISTS**

9 The parties' final Trial Witness Lists and Trial Exhibit Lists, pursuant to FRCP Rule
10 26(a)(3), shall be due on the date of the Pre-Trial Conference. The parties will have five
11 (5) days from that date to file and serve a list of any objections they may have regarding
12 said Trial Witness Lists or Trial Exhibit Lists.

13 **XI. SETTLEMENT**

14 The parties have determined that settlement cannot be evaluated until some discovery
15 has been conducted by the parties. However, the parties would like the Court to schedule
16 an
17 Early Settlement Conference on a date a few months from now.

18 **XII. TRIAL**

19 This action should be ready for trial by August 2003, and is expected to take
20 approximately seven (7) days.

21 **SIGNATURE AND CERTIFICATION BY PARTIES AND TRIAL COUNSEL**

22 Pursuant to Local Rule 16-12, counsel and parties certify that they have read the
23 brochure entitled, "Dispute Resolution Procedures in the Northern District of California";
24 discussed the available dispute resolution options provided by the Court and private
25 entities; and, considered whether their case might benefit from any of the available dispute
26 resolution options.

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Respectfully submitted

LAW OFFICES OF GAYLA B. LIBET

Dated: _____ By: /S/
GAYLA B. LIBET, Esq.
Attorneys for Plaintiffs

OFFICE OF THE OAKLAND CITY ATTORNEY

Dated: _____ By: /S/
STEPHEN Q. ROWELL, Esq.
Attorneys for Defendants
CITY OF OAKLAND, RICHARD WORD,
JOHN CLEMENT and MARCUS MIDYETT

PROOF OF SERVICE
Muwwakkil, et al. v. City of Oakland, et al.
United States District Court Case No. C02-1799 CW

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below I served the within documents:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- ☐ by causing personal delivery by (name) of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing such envelope to be sent by Federal Express/ Express Mail.

Gayla B. Libet
 LAW OFFICES OF GAYLA B. LIBET
 4105 Emerald St.
 Oakland, CA 94609

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on __August 13, 2002, at Oakland, California.

/S/ _____
 REESE JOHNSON